

UNITED STATES BANKRUPTCY COURT
for the
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES COURTHOUSE AND FEDERAL BUILDING
280 SOUTH FIRST STREET, ROOM 3035
SAN JOSE, CALIFORNIA 95113-3099

MARILYN MORGAN
UNITED STATES BANKRUPTCY JUDGE

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Practices and Procedures
Honorable Marilyn Morgan

Judge Morgan's **PRACTICES AND PROCEDURES** are presented as a tool in providing efficient and effective services by counsel. The hope is that this information will provide you and your client with an accurate expectation of the processes used in this court. Emphasizing the importance of expectations: "*Disappointment is a sort of bankruptcy – the bankruptcy of a soul that expends too much in hope and expectation*" (American philosopher Eric Hoffer).

- 1. Calendaring Matters.** Judge Morgan has separate calendars for relief from stay, adversary motions, case motions, chapter 11 disclosure statements and plan confirmations, chapter 13 confirmations, final accounts and fee applications, chapter 11 status conferences, adversary case management conferences, and trial setting conferences.

The San Jose Division uses an Open Calendar that allows counsel to self-select an available hearing date. Complete details regarding the Open Calendar procedure for the division and for Judge Morgan are available at [Calendar Procedures for San Jose Division](#).

To calendar an emergency matter to be heard on shortened time, an application for an order shortening time that complies with Bankruptcy Local Rule 9006-1 is required before a hearing date will be set. Counsel should include preferred calendar dates and the proposed notice to affected parties as part of their application and a proposed order. Requests for temporary restraining orders will only be calendared after an adversary complaint has been filed. You should include an application for an expedited hearing with the request for TRO and complaint. Generally, Judge Morgan requires a minimum of four hours notice to affected parties prior to conducting a hearing on a TRO.

Once Judge Morgan has reviewed an application for shortened time, she will issue an order setting the date and time of the hearing and specifying any special instructions regarding notice, as appropriate. Written opposition is generally not required to be filed prior to a hearing set on shortened time, and a party may appear at the hearing to oppose the motion orally.

If you need to contact Judge Morgan's courtroom deputy to schedule a hearing not subject to the open calendar procedure, you may call Millie McGowan at (408) 535-5004. Her e-

mail address is millie_mcgowan@canb.uscourts.gov.

2. **Continuing or Withdrawing Calendared Matters.** We receive many inquiries about how to continue or remove a matter on the court calendar. As a matter of courtesy to the court and opposing counsel, we suggest the following procedures.

To remove a new matter from the calendar, you may submit a written withdrawal to the court no later than 3 days prior to the hearing. If you wish to continue a new matter, the timing depends upon who has received notice. If the matter has been noticed to all creditors, please submit a notice of continued hearing and serve it on all creditors at least 7 days prior to the hearing. If the matter concerns only specific parties in interest, such as a motion for relief from stay, contact the court and counsel 24 hours in advance to advise of the continuance.

If you wish to continue a hearing on a matter that has already been before the court, you have two options. You may submit a stipulation and order (if the parties agree) or application and order at least 3 days prior to the hearing. If the hearing is in less than 3 days, please contact chambers to advise the court that you will request a continuance at the hearing. Generally, Judge Morgan prefers that appearances to request a continuance be made telephonically.

3. **Calling Chambers.** You may call Judge Morgan's law clerks at (408) 535-5100 if you have questions regarding procedural matters. Please keep in mind that [Federal Rule of Bankruptcy Procedure 9003](#) prohibits *ex parte* contacts with the court and is applicable to law clerks as well as judges. Additionally, you may contact chambers to check on the status of an order or to inform the court of the following matters:

- an objection to a proposed form of order;
- a settlement of a matter calendared for hearing; or
- that the parties will go forward with a chapter 11 disclosure statement or plan confirmation hearing.

Finally, you may contact chambers to obtain assistance with a discovery dispute. When appropriate under Civil Local Rule 37-1(b), Judge Morgan will attempt to resolve discovery disputes through a telephonic conference with all parties.

4. **Submission of Orders After Hearings.** Please observe the provisions of Bankruptcy Local Rule 9021-1(c) and 9022-1.
5. **Telephonic Hearings.** Counsel may appear telephonically as described in [Telephonic Appearance Policy](#). Judge Morgan encourages counsel to appear telephonically when appropriate because of the savings in time and cost. Generally, Judge Morgan has three procedures for telephonic appearances.

The first involves case management conferences in adversary proceedings. This is an "opt-out" system; that is, Court Conference will arrange a telephonic appearance unless you advise them you are going to appear personally. On this calendar, nearly all appearances are telephonic. Instructions for this telephonic appearance are attached to the [order setting](#)

[telephonic case management conference](#). Because the court coordinates a large number of telephonic conferences, continuances are allowed only with leave of court and must be sought in writing at least ten days before the hearing date. Forms of [Application/Stipulation to Continue Telephonic Case Management Conference](#) and [Order Continuing Telephonic Case Management Conference](#) are posted on this site.

The second involves chapter 13 relief from stay hearings from the Salinas venue. This is a “mandatory” system. Both the moving party and debtor’s counsel appear telephonically from their offices. At the time a hearing is calendared, the moving party should download the [Order Setting Telephonic Hearing For Relief From Stay](#), insert the pertinent information regarding the date, time and location of the hearing and serve a copy with the motion. Please note that the Order has been pre-signed by Judge Morgan and is effective as soon as the movant self-selects a hearing date from the list of available dates listed in the Open Calendar, fills in the blanks and serves the Order upon the debtor. Do not prepare a new Order on your word processor or submit the Order (or any order setting the preliminary hearing) for signature by the court. Costs for this appearance are paid by the moving party. If a party is appearing in pro per, the motion is generally heard on the 11:00 a.m. calendar where personal appearances are allowed.

Finally, with respect to most other matters, Judge Morgan has an “opt-in” system. If you want to appear telephonically on a matter, please contact Court Conference at 1-866-582-6878 at least 24 hours in advance of a hearing to insure that arrangements are completed in time for the hearing.

6. **Relief From Stay.** The [Guidelines for Motions for Relief from Stay](#) explain the factors Judge Morgan considers in ruling on a relief from stay motion. Most stay motions are resolved at the preliminary hearing. If a final hearing is set, it is generally an evidentiary hearing.

All relief from stay motions are to be accompanied by a [relief from stay coversheet](#), which is available on-line or at the clerk’s office. The coversheet is Judge Morgan’s most important preparation tool for the relief from stay calendar. If the relief from stay coversheet is not accurate and complete, the motion may be denied without prejudice.

Unless an order specifically provides to the contrary, Judge Morgan makes certain assumptions regarding every order submitted following a motion for relief from stay. These assumptions should be taken into account when submitting or reviewing proposed orders.

Please refer to paragraph 5 above regarding the special procedures for relief from stay hearings in chapter 13 cases from the Salinas venue.

7. **Adversary Proceedings.** Adversary proceedings progress on written orders issued by the court. Each confirms dates, times and procedures. The first is the [order setting the telephonic case management conference](#) which is served with the summons and complaint. Pursuant to these orders, case management conference statements are generally required at least 7 days before each conference and continuances must be requested in writing at least

10 days prior to the conference date.

Short cause matters are generally set for trial after the first status conference. In more complex cases, Judge Morgan issues a trial setting order requiring counsel to prepare a [joint pre-trial order](#). The pre-trial order supersedes all pleadings in the case. The trial setting orders contain the protocol for [courtroom procedures for trial](#) or evidentiary hearing.

Once a matter has been set for trial, Judge Morgan will continue the trial to document a settlement but not because of ongoing negotiations. Where the settlement documentation (Judgment, Stipulation For Judgment or Dismissal) has been filed with the court prior to the trial date no appearance by counsel is necessary. Otherwise, counsel must appear at the calling of the calendar to put the settlement on the record. With prior approval, counsel may appear by telephone for this purpose.

The Bankruptcy Dispute Resolution Program (BDRP) established by the district provides opportunities for mediation, arbitration and settlement. A request for referral may be made at any time through procedures outlined in the [Local Bankruptcy Rules](#). B.L.R. 9040 *et. seq.*

8. **Chapter 11 cases.** Judge Morgan calendars regular conferences on the status of each pending chapter 11 case. [Chapter 11 Status Conference Checklist](#) describes Judge Morgan's expectations for both the conferences and the case.

The San Jose Division of the U.S. Bankruptcy Court for the Northern District of California has adopted [Guidelines for Early Disposition of Assets in Chapter 11 Cases; Pre-Packaged Plans; and the Sale of Substantially All Assets Under § 363](#). Please refer to these Guidelines when preparing for a contested matter involving any of these issues.

9. **Forms.** Both [Northern District](#) and [official bankruptcy forms](#) are available on this website. The San Jose Division has its own [forms](#) for scheduling orders in adversary proceedings and [Chapter 13 forms that counsel are encouraged to use](#).

10. Judge Morgan observes the following guidelines:

- [Bankruptcy Petition Preparer Guidelines](#)
- [Distribution of Funds in Chapter 13 Cases](#)
- [Guidelines for Cash Collateral and Financing Motions and Stipulations](#)
- [Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees](#)
- [Guidelines for Early Disposition of Assets in Chapter 11 Cases, Pre-Packaged Plan, the Sale of Substantially All Assets Under § 363\(b\)](#)
- [Guidelines for Legal Services to be Provided by Debtor's Attorney in Chapter 7 Cases](#)
- [Guidelines re: Sale Orders](#)
- [Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys \(San Jose Division\)](#)